

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

LUMETIQUE, INC.,

Plaintiff,

v.

THE PROCTOR & GAMBLE
COMPANY,

Defendant.

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No. _____

PLAINTIFF'S ORIGINAL COMPLAINT

Parties, Jurisdiction, and Venue

1. Plaintiff Lumetique, Inc. is a California corporation with its principal place of business at 18475 Bandilier Circle, Fountain Valley, California.

2. Defendant The Proctor & Gamble Company is an Ohio corporation with its principal place of business at 1 Proctor & Gamble Plaza, Cincinnati, Ohio. Proctor & Gamble sells its products throughout the United States, including in Marshall, Texas and throughout the Eastern District of Texas.

3. Proctor & Gamble may be served through its registered agent in Texas, CT Corporation, at 350 North St. Paul Street, Dallas, Texas.

4. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1338 because this is a patent infringement case.

5. Venue is proper because multiple acts of infringement have occurred, and are continuing to occur, in this District.

Facts

6. Lumetique develops and sells home fragrance products under the DayNa Decker® brand name. Founded in 2001 by entrepreneur and designer DayNa Decker, Lumetique invented the first wood-wick candle that is suitable for mass marketing and production.

7. Before Ms. Decker developed this design, virtually all candles on the market used cotton wicks. But after thousands of experiments with different wick materials and designs, Ms. Decker discovered that wood wicks have advantages over cotton ones.

8. When properly designed, wood wicks produce an even burn rate, a distinctive “teardrop” flame, low soot emissions, and crackling sounds reminiscent of a fireplace. This innovation resulted in Lumetique’s EcoWood wick and Botanika Chandel®, which have netted Lumetique more than \$10 million in sales revenue since their introduction in 2005.

9. Lumetique obtained, and currently owns, multiple patents on its wood wick technology. These patents include D644,360, D644,359, and D643,554 (which are attached as Exhibit A-C, respectively).

10. In July 2010, Procter & Gamble launched the Febreze® Wood Wick Candle. This candle directly infringes the '360, '359, and '554 patents. Procter & Gamble markets these candles throughout the United States, including in Marshall, Texas.

11. Indeed, Procter & Gamble sells these products through virtually every major mass retailer in the Eastern District of Texas, including Wal-Mart, Target, Sam's, Costco, BJ's, Walgreens, CVS, Rite-Aid, Dollar Stores, Kroger, SuperValu, Safeway, Albertson's, and Topco Stores.

12. Procter & Gamble's supplier for its Febreze® Wood Wick candles is Smith Mountain Industries, a Virginia-based candle manufacturer former business partner of Lumetique.

13. Smith Mountain uses Lumetique's wood wick candle design, patented technology, and proprietary manufacturing techniques in its candles. While Smith Mountain initially had a valid license from Lumetique, Smith Mountain lost that license in May 2010 after it stopped paying royalties and breached its agreement with Lumetique.

14. Procter & Gamble learned about this situation shortly after it developed. Recognizing that it was using Lumetique's proprietary technology, Procter & Gamble immediately entered into licensing discussions with Lumetique. However, on information and belief, Procter & Gamble suspended these

discussions after concluding that Lumetique was a small competitor that lacked the resources to pursue litigation.

15. By continuing to make, use, sell, and offer for sale Febreeze® Wood Wick Candles in the United States without a license from Lumetique, Proctor & Gamble is directly and indirectly infringing Lumetique's '360, '359, and '554 patents. This infringement is ongoing and is occurring throughout the Eastern District of Texas.

16. Proctor & Gamble's infringement is knowing and willful because. Proctor & Gamble knows that Lumetique's patent claims cover Febreeze® Wood Wick Candles. Indeed, Lumetique has discussed licensing with Proctor & Gamble and given Proctor & Gamble ample notice of what Lumetique's '360, '359, and '554 patents cover.

17. By selling these candle products without authorization, Proctor & Gamble is also using Lumetique's non-patented trade secrets and tortuously interfering with Lumetique's contract with Smith Mountain.

18. Proctor & Gamble's infringement has allowed it to dominate the market for wood wick candles and drive out or significantly reduce the market share of Lumetique's legitimate licensees. Proctor & Gamble's continued payments to Smith Mountain for unlicensed wood wick candles (which Smith Mountain is manufacturing and selling in violation of its agreement with

Lumetique) are also financing Smith Mountain's unlicensed and unauthorized manufacturing operation. Proctor & Gamble's actions have caused, and are continuing to cause, irreparable harm to Lumetique's business.

CAUSES OF ACTION

FIRST CAUSE OF ACTION: PATENT INFRINGEMENT

19. Lumetique incorporates the foregoing paragraphs as if fully set forth here.

20. Proctor & Gamble has committed, and is continuing to commit, multiple acts of infringement of the '360, '359, and '554 patents.

21. Proctor & Gamble's infringement is willful.

22. Lumetique is entitled to recover damages, including lost profits, a reasonable royalty, treble damages for willful infringement, and attorney's fees.

23. Lumetique is also entitled to a preliminary and permanent injunction prohibiting further Proctor & Gamble from continuing to manufacture, use, sell, or offer for sale any infringing products.

SECOND CAUSE OF ACTION: TRADE SECRET MISAPPROPRIATION

24. Lumetique incorporates the foregoing paragraphs as if fully set forth here.

25. Through its relationship with Smith Mountain, Proctor & Gamble has knowingly misappropriated non-patented trade secrets related to Lumetique's proprietary manufacturing process for making wood wick candles.

26. Smith Mountain has derived substantial monetary benefit from this misappropriation.

27. Lumetique is entitled to recover damages, including punitive damages, for this misappropriation.

THIRD CAUSE OF ACTION: TORTIOUS INTERFERENCE

28. Lumetique incorporates the foregoing paragraphs as if fully set forth here.

29. Lumetique had a valid contract with Smith Mountain.

30. Proctor & Gamble has knowingly interfered with Lumetique's contractual relationship with Smith Mountain by inducing Smith Mountain to breach its contract with Lumetique.

31. Among other things, Proctor & Gamble has induced Smith Mountain to disclose Lumetique's confidential information, stop paying royalties to Lumetique in violation of the contract, and misappropriate proprietary technology and trade secrets in violation of Smith Mountain's contract with Lumetique.

32. Lumetique is entitled to recover damages, including punitive damages, for Proctor & Gamble's tortious interference.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Lumetique respectfully requests judgment against The Proctor & Gamble Company for the following:

1. Legal and equitable relief;
2. General, special, and exemplary damages, including but not limited to reasonable royalty, lost profits, multiple damages for willful infringement, and multiple damages for exceptional case;
3. Prejudgment and post-judgment interest;
4. Cost of suit;
5. Attorneys' fees;
6. Preliminary and permanent injunctive relief;
7. All other relief, in law and equity, to which Lumetique may be entitled.

Respectfully submitted,

AHMAD, ZAVITSANOS & ANAIPAKOS, PC

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